

REMARKS

This Response is submitted in response to the Office Action mailed on December 28, 2006. The Office Action rejects Claims 1-5 and 7-9 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,207,638 (*Portman*). Also, the Office Action rejects Claims 7-9 under 35 U.S.C. § 112 and makes a double patenting rejection in view of co-pending application Serial No. 10/562,460. In addition, the Patent Office states that the last Information Disclosure Statement was not properly submitted.

With respect to the Information Disclosure Statement, the Patent Office states that it did not include a "fee or certification." Applicants respectfully submit that a fee was included. Applicants refer the Patent Office to page 2 of the transmittal letter wherein the box is checked "The Commissioner is hereby authorized to charge the amount of \$180 to cover the required fee to Deposit Account No. 02-1818" (emphasis in original). Accordingly, Applicants respectfully submit that the Information Disclosure Statement was submitted with the proper fee and should have been considered by the Patent Office.

With respect to the 35 U.S.C. § 112 rejection of Claims 7-9, Applicants respectfully submit that there is sufficient antecedent basis for the term "the composition" and that this rejection is not proper. Claims 7-9 depend from Claim 1 which claims, in part, "the method comprising administering to the person a composition." Thus, antecedent basis is provided in Claim 1 for "the composition" used in Claims 7-9. Therefore, Applicants respectfully request that the 35 U.S.C. § 112 rejection be withdrawn.

With respect to the obviousness-type double patenting, Applicants are submitting herewith a terminal disclaimer. Therefore, Applicants respectfully request that this rejection be withdrawn.

With respect to the prior art rejection, Applicants conducted an interview with the Examiner in charge of the above-identified patent application. Applicants thank the Examiner for the time and courtesy extended during the interview. At the interview, Applicants noted that one of the important features of the claimed invention is the use of only intact whey protein as the protein source. Applicants also pointed out that the prior art and, specifically, *Portman* did not use as a protein source only intact protein. For example, as set forth in *Portman* in column 5, lines 2-4, casein is included. In addition, as set forth in column 5, lines 2-4 and column 6, lines

10-12, protein in the form of GMP is also included. Thus, *Portman* does not disclose, nor even suggest, the inventive feature of a protein source that includes only intact whey protein.

Accordingly, Applicants suggested at the interview and have amended each of independent Claims 1 and 5 to require a protein source "consisting essentially of intact whey proteins." This concept, if anything, is taught away from by *Portman* and, accordingly, the claims are not anticipated nor rendered obvious by *Portman* in view the amendment. Therefore, Applicants respectfully request that the above-identified patent application now be passed to allowance.

To the extent the Patent Office does not believe the patent application is now in a condition for allowance, Applicants respectfully request that the Patent Office contact Applicants' undersigned attorney.

Respectfully submitted,

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